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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,615	09/09/2003	Richard Malchar	036366-0101	2542

23935 7590 10/18/2005

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EXAMINER

AMERSON, LORI BAKER

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/658,615	Applicant(s) MALCHAR, RICHARD	
	Examiner L. Amerson	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
                     4a) Of the above claim(s) 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
                     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
                     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
                     a) ☐ All    b) ☐ Some    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Response to Arguments**

1. The indicated allowability of claims 12-14 is withdrawn in view of the newly discovered reference(s)

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- a. Claims 1, 2, 4, 7, 9, 11, 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Baird. Baird discloses a frame 44, having a first member 18 and second member 52 with a central portion in Figure 2 where the members have first and second ends and the members are coupled together and the ends. Support members 42 have first and second ends coupled to the first and second members near a central portion. Cross segments 44 are coupled to the frame.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- b. Claims 1-2, 5 and 9-11, 13, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaplan et al in view of Scott. Kaplan discloses an

apparatus having a frame (fig. 2) and supporting members (14,16) coupled to the frame. The members are adjustable (fig.1). The frames comprises an arc member and linear member (fig. 2). The support members are flexible (fig. 1). The frame is semi oval-shaped and open on one side where the opposite side is closed (fig. 2-3) and the support members are contoured to create a space for a user's neck (fig. 1-2). The frame has a hinge mechanism (38) for folding (fig. 2-3). Applicant argues that the supporting members are not coupled to the frame, supporting members not having a first and second end and the frame is not semi-oval shaped, the examiner contends that the supporting members are, as broadly claimed, coupled to the frame via an indirect connection. Support members have a first end (top) and a second end (bottom) illustrated in Figure 4 and the frame forms a semi-oval shape (fig. 2) that opens on one side. Kaplan discloses all of the limitations of the claimed invention except for an interior portion where the user is positioned. Scott teaches an interior portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a interior portion for a user to stand inside while positioning a support member over the shoulder for increased stability of the device on the user while exercising.

c. Claims 1-5, 7-8, 11, and 23 are rejected under 35 U.S.C. 102(b) as being unpatentable over Brine in view of Scott. Brine discloses an apparatus having a frame (10) and supporting members (80) coupled to the frame. The members are adjustable (fig. 2; 88). The frame comprises cross segments (16) that are

releasably coupled to the frame (fig. 4, 152). The cross segments have a fitting member (42) configured to receive a weight (70) and the member is releasably coupled to the segment (fig. 2). The frames comprise an arc member (fig. 1-18) and linear member (112). The support members are contoured to create a space for a user's neck (fig. 1). As to claims 15-19, see the paragraph above for claims 1, 4, 7 and 8. Brine discloses all of the limitations of the claimed invention except for an interior portion where the user is positioned. Scott teaches an interior portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a interior portion for a user to stand inside while positioning a support member over the shoulder for increased stability of the device on the user while exercising.

d. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brine and Scott as applied to claim 5 above. Brine discloses the support members coupled near the arc member and near the linear members in Figure 4A. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brine such that directly attaching the support members to the linear and arc members or directly attaching the support members near the linear and arc members would serve the same function of support the user wearing the support members.

### ***Conclusion***

4. Note the similar devices on the Form 892. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L

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Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur.. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "L. Amerson", with a stylized flourish at the end.

L. Amerson